

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

INSUBUY, INC.

Plaintiff

vs.

COMMUNITY INSURANCE AGENCY
INC.; RAMESH J. PATEL;
GUBMAN N. MOORE, INC.; and
ROBERT M. CHORZEPA.

Defendants.

COMMUNITY INSURANCE AGENCY,
INC.

Counterclaimant

vs.

INSUBUY, INC.; and
NARENDRA KHATRI

Counterdefendants.

Civil Action No.

1:10-cv-03925

Judge : St. Eve

Jury Trial Demanded

**MOTION OF INSUBUY, INC. AND NARENDRA KHATRI FOR PARTIAL SUMMARY
JUDGMENT THAT THE TERMS “VISITORS INSURANCE” AND “VISITORS MEDICAL
PROTECTION” ARE GENERIC FOR INSURANCE SERVICES, FOR PARTIAL DISMISSAL
OF DEFENDANT CIA’S COUNTERCLAIM, AND FOR JUDGMENT IN FAVOR OF
INSUBUY’S CLAIMS FIVE AND SIX**

Plaintiff Insubuy, Inc. (“Insubuy”) and Counterdefendant Narendra Khatri (collectively “Plaintiffs”) hereby move the Court to find that the terms VISITORS INSURANCE and VISITORS MEDICAL PROTECTION are generic for insurance services, for judgment of partial dismissal *with prejudice* of Counterclaim (Count I) of Defendant Community Insurance Agency, Inc. (“CIA”) and for judgment in favor of Insubuy’s Claims Five and Six. In support of

this motion, Plaintiffs submit a supporting memorandum of law and a statement of material facts, under Local Rule 56.1, and state the following:

1. In this action, Defendant CIA asserts alleged exclusive rights to use the terms VISITORS INSURANCE and VISITORS MEDICAL PROTECTION with respect to insurance services, including medical insurance for visitors to the U.S. and other countries.
2. Count I of the Counterclaims of Defendant CIA asserts a claim against Plaintiffs for alleged unlawful registration of Internet domain names under the Anti-Cybersquatting Consumer Protection Act (“ACPA”). 15 U.S.C. §1125(d)
3. A claim under the ACPA requires that the claimant possess a distinctive mark. A generic term can never support a claim under the ACPA because a generic term is not a distinctive mark.
4. After commencement of this action, CIA obtained Illinois State trademark registrations for the terms VISITORS INSURANCE (No. 102078) and VISITORS MEDICAL PROTECTION (No. 102044) for insurance-related services, and CIA has asserted these registrations against Plaintiffs.
5. Section 45 of the Illinois Trademark Registration and Protection Act provides that the Secretary of State shall cancel any registration for which the Court finds the term to be generic. (765 ILCS 1036/45)
6. The terms VISITORS INSURANCE and VISITORS MEDICAL PROTECTION are generic for insurance services. There is compelling evidence that these terms are commonly used to refer to a type of medical insurance for persons visiting the U.S. and other countries, including evidence from dictionaries, statements made by the United

States Patent and Trademark Office, generic usage by third-parties and even generic usage by the claimant, CIA.

7. Since the terms VISITORS INSURANCE and VISITORS MEDICAL PROTECTION are generic for insurance services, Defendant CIA's Counterclaim (Count I) fails as a matter of law with respect to the term VISITORS MEDICAL PROTECTION, and CIA's Illinois state trademark registrations for the terms VISITORS INSURANCE and VISITORS MEDICAL PROTECTION are invalid.

WHEREFORE, Plaintiffs respectfully request that the Court find that the terms VISITORS INSURANCE and VISITORS MEDICAL PROTECTION are generic as to insurance services, that the Court enter summary judgment of partial dismissal *with prejudice* of Defendant CIA's Counterclaim (Count I) as to the term VISITORS MEDICAL PROTECTION and as to the domains *visitorsmedicalprotection.com* and *visitormedicalprotection.com*, and that the Court enter summary judgment in favor of Insubuy's Claims Five and Six for cancellation of CIA's Illinois State trademark registration No. 102078 (VISITORS INSURANCE) and registration No. 102044 (VISITORS MEDICAL PROTECTION).

Respectfully submitted,

Date: December 14, 2011

/s/Fritz L. Schweitzer III
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And Counterdefendant Narendra Khatri

CERTIFICATE OF SERVICE

This is to certify that on this 14th day of December, 2011, a true and correct copy of the foregoing **Motion for Summary Judgment** was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

December 14, 2011
Date

/s/Joan M. Burnett
Joan M. Burnett